

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PRE-APPEAL BRIEF REQUEST FOR REVIEWDocket Number (Optional)
1237-0938I hereby certify that this correspondence is being filed electronically
with the United States Patent and Trademark Office.Application Number
10/619,811Filed
07/15/2003on March 14, 2008

Signature

First Named Inventor
Ronald I. Hickland, Jr. et al.Typed or printed
name Susan J. ShickArt Unit
1792Examiner
Saeed T. ChaudhryApplicant requests review of the final rejection in the above-identified application. No amendments are being filed
with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
Note: No more than five (5) pages may be provided.

I am the

- ☐ applicant/inventor.
- ☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)
- ☒ attorney or agent of record.
Registration number 20,646

/Edward M. Keating/
SignatureEdward M. Keating
Typed or printed name(312) 236-8500
Telephone number

- ☐ attorney or agent acting under 37 CFR 1.34.
Registration number if acting under 37 CFR 1.34 _____

March 14, 2008
DateNOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below*.☒ *Total of 3 forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

REASONS FOR REVIEW

At the time of filing of the Notice of Appeal concurrently with this Pre-Appeal Brief Request for Review claims 1-11, 13-19, 21, 22, 24, 25, 27 and 28 were present in the application.

Of those claims, claims 13-19, 21, 22, 25, 27 and 28 were indicated to be allowable over the prior art.

In Advisory Action before the filing of an appeal brief, the examiner continued an objection to dependent claim 24 as a substantial duplicate of claim 18. In a telephone interview with the examiner on February 1, 2008, the examiner indicated he would withdraw his objection to claim 24 and allow this claim if applicants would resubmit their claim 24 with a request that the objection be removed. Applicants filed such a request electronically on February 5, 2008 but as of the date of this appeal, the request is shown in Image File Wrapper in Public Pair as received and forwarded to the examiner. On March 13, 2008, the examiner told applicants' attorney that his objection to claim 24 has been removed but this action is not shown on Public Pair. For purposes of this Request for Review, applicants will consider this claim to be allowed.

The following rejections, in addition to the rejection of claim 24 which has been removed, were made in the last office action:

Claims 1-11 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement because independent claim 1 recites a limitation "a dry plasticizer absorbing material" and the examiner asserts that there is no support for this limitation in the disclosure of the application.

Applicants respectfully submit that the rejection of claims 1-11 should be withdrawn for the reasons stated on pages 7 and 8 of applicants' Amendment before Final

Rejection which was electronically filed on January 11, 2008, as well as for the reasons herein.

In the final rejection, the examiner stated that claim 1 recited the limitation "a dry plasticizer absorbent material" and that there is no support for this limitation in the disclosure. After the applicants presented their argument as set forth on pages 7 and 8 of the Amendment after Final Rejection, the examiner apparently withdrew his argument that there is no support for dry sphagnum peat moss and soft pine wood dust in the specification, but apparently continued his objection to the claim limitation "a dry plasticizer absorbent material" because the other specific material listed in the specification, namely silica gel, was not explicitly stated to be dry. The examiner set forth his position in an Advisory Action before the filing of an Appeal Brief, dated January 28, 2008, saying that:

"11. The request for reconsideration has been considered but does NOT place the application in condition for allowance because: 'still there is no support for 'dry plasticizer' since dry silica gel has no support and dry plasticizer include a dry silica gel."

Applicants do not understand the basis for the examiner's rejection. The examiner has acknowledged that the sphagnum peat moss and the soft pine wood dust are dry plasticizer absorbent materials. Even if the examiner contends that silica gel does not find support in the specification as a dry plasticizer absorbent material, which applicants deny, there is still support in the specification for a dry plasticizer absorbent material, namely the sphagnum peat moss and the pine wood dust. It is well known that a broad claim can be enabled by the disclosure of a single embodiment, and it is not unpatentable for lack of enablement simply because the claim reads on another embodiment of the invention that may be inadequately disclosed. Applicants also wish to point out that in

addition to the dried sphagnum peat moss, the fine soft pine wood dust and the silica gel, the specification in [0015] states "Other microfiber materials may also be used as the absorbent." It is believed that the dryness of the microfiber materials as well as the silica gel is explicit in the specification because the specification also states that these materials may be mixed together rather than be used one at a time. The dry sphagnum peat moss if mixed with a silica gel that is wet or other than dry would not maintain the sphagnum moss in a dry condition. This is another reason that it is inherent in the specification that the silica gel or other microfiber materials are dry, thus providing support for the claim 1, the independent claim.

For the foregoing reason, it is respectfully submitted that the finally rejected claims 1-11 are in condition for allowance. Accordingly, favorable reconsideration and allowance of these claims are requested.

Respectfully submitted,

Date: March 14, 2008

/Edward M. Keating/

Edward M. Keating

Registration No. 20,646

Cook, Alex, McFarron, Manzo,
Cummings & Mehler, Ltd.
200 W. Adams Street, Suite 2850
Chicago, IL 60606
(312)236-8500 Main
(312) 236-8176 Fax